



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Legislative Analysis

Board of County Commissioners

Tuesday, November 15, 2005

9:30 AM

Commission Chamber

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**Miami-Dade County Board of County Commissioners
Office of the Commission Auditor**

Legislative Analysis

**Board of County Commissioners
Meeting Agenda**

Tuesday, November 15, 2005

Written analyses for the below listed items are attached for your consideration in this Legislative Analysis.

Item Number(s)

4(B)	7(A)
8(J)(1)(A)	

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Chief Legislative Analyst, at (305) 375-5469.

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LEGISLATIVE ANALYSIS

ORDINANCE AMENDING THE COUNTY'S EXPEDITE PROGRAM FOR CAPITAL CONSTRUCTION (SECTIONS 2-8.2.6 AND 2-8.2.7 OF THE CODE); REPEALING THE SUNSET PROVISION IN ORDINANCE NO. 05-155; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

County Manager

I. SUMMARY

This ordinance repeals the sunset provision of the Capital Improvement Expedite Program, currently scheduled to sunset in January 2006.

II. PRESENT SITUATION

The Expedite Ordinance provides authority for the Manager to advertise and award certain capital construction contracts under Safe Neighborhood Parks, Quality Neighborhood Initiative, Annual Proposed Capital Budget, Building Better Communities, Transportation Improvement Plan, and other programs.

III. POLICY CHANGE AND IMPLICATION

The repeal of the sunset provision for the Expedite Ordinance continues County policy of providing an expedited manner for the Manager to negotiate and award non-controversial capital improvement projects, with previous Commission approval, for certain projects.

IV. ECONOMIC IMPACT

The Manager's report states that a sunset of the Expedite Ordinance will cost in excess of \$1 million in increased staff time and project costs.

V. COMMENTS AND QUESTIONS

An earlier draft of this ordinance (deferred 11-1-05) provided for an automatic repeal of the Capital Improvement Expedite Program if the voters approve any amendment to the County Charter which affects the powers of the Commission, the Mayor, or the Manager to award contracts.

LEGISLATIVE ANALYSIS AND ECONOMIC IMPACT STATEMENT

7(A) ORDINANCE PERTAINING TO CHAPTER 21 OF THE CODE; CREATING ARTICLE XVII WITH REGARD TO SEXUAL OFFENDERS AND SEXUAL PREDATORS.

Commissioners Jose “Pepe” Diaz, Bruno A. Barreiro,
and Senator Javier D. Souto

7(A) Alt. ORDINANCE PERTAINING TO CHAPTER 21 OF THE CODE; CREATING ARTICLE XVII WITH REGARD TO SEXUAL OFFENDERS AND SEXUAL PREDATORS.

Chairman Joe A. Martinez, Commissioners Carlos A. Gimenez, Rebeca Sosa,
and Senator Javier D. Souto

I. SUMMARY

These two ordinances propose to create an article in the County Code that would:

- Prohibit convicted sexual predators and sexual offenders from residing within 2,500 feet of a public or private school.
- Prohibit sexual predators from using a public park when a child under the age of 16 is on said park, except if the sexual offender or predator is the parent or guardian of a child present in the park.
- Prohibit sexual predators or offenders from knowingly entering or remaining in a child care facility, unless he/she is a parent or guardian dropping off or picking up her/her child at the facility; or has written permission from a parent or guardian to pick up a child from the facility. The sexual offender or predator must remain under the supervision of childcare facility officials while on facility premises.
- Prohibit landlords from renting or leasing to a sexual offender or sexual predator any residential property located within 2,500 feet of a school.
- Require landlords to get written confirmation that the prospective tenant is not a sexual predator or sexual offender.
- Sets various penalties and fines for sexual predators, sexual offenders, and landlords who fail to abide by the code.
- **Item 7(A)** would apply these prohibitions to municipalities and unincorporated portions of Miami-Dade County.
- **Item 7(A) Alt.** would only apply to unincorporated Miami-Dade County.
- **These ordinances do not apply to sexual predators and offenders who established residency in the restricted areas prior to Nov. 1, 2005.**

II. PRESENT SITUATION

Currently, Sections 794.065, 947.1405 and 948.30, Florida Statutes, prohibit sexual offenders and sexual predators from living within 1,000 feet of certain locations. Sexual predators are required by state law to register with the Florida Department of Law Enforcement and provide information such as name, social security number, age, race,

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sex, date of birth, and photograph. State law also requires community and public notification of the presence of a sexual predator or sexual offender in a neighborhood.

In Miami-Dade County, a growing number of municipalities have adopted increasingly restrictive sexual predator ordinances that limit where sexual predators and sexual offenders can live. Outside of existing state law, no uniform sexual predator residency ordinance exists which applies to both unincorporated Miami-Dade County and municipalities located in the county.

III. POLICY CHANGE AND IMPLICATION

These ordinances would:

- Prohibit convicted sexual predators and sexual offenders from residing within 2,500 feet of a public or private school. **Penalty:** \$1,000 or up to 364 days in County jail or both.
- Prohibit sexual predators from using a public park when a child under the age of 16 is on said park, except if the sexual offender or predator is the parent or guardian of a child present in the park. **Penalty:** \$500 or up to 60 days in County jail or both.
- Prohibit sexual predators or offenders from knowingly entering or remaining in a child care facility, unless he/she is a parent or guardian dropping off or picking up her/her child at the facility; or has written permission from a parent or guardian to drop off or pick up a child from the facility. The sexual offender/predator also must remain under the supervision of childcare facility officials while on facility premises. **Penalty:** \$500 or up to 60 days in County jail or both.
- Prohibit landlords from renting or leasing to a sexual offender or sexual predator any residential property located within 2,500 feet of a school. **Penalty:** \$500 or up to 60 days in County jail or both.
- Require landlords to get written confirmation that the prospective tenant is not a sexual predator or sexual offender. **Penalty:** \$500 or up to 60 days in County jail or both.
- **Item 7(A)** would apply these prohibitions to municipalities and unincorporated portions of Miami-Dade County.
- **Item 7(A) Alt.** would only apply to unincorporated Miami-Dade County.

Neither ordinance would apply to sexual offenders or sexual predators who established residence in a potentially restricted area prior to November 1, 2005; or if the offender was a minor when the sexual offense was committed and was not tried as an adult; or if the school was opened after the sexual predator established residence. There are currently close to 3,000 registered sexual predators and offenders residing in Miami-Dade County, according to MDPD staff. There are presently close to 300,000 rental properties in Miami-Dade County.

IV. ECONOMIC IMPACT

Both ordinances require that signs be posted at all parks alerting visitors to the prohibition of sexual offenders and sexual predators to the park while minors are present. The Parks Dept. estimates the cost to post these proposed signs at all parks to be approximately \$63,750 (\$250/standard metal sign at 255 parks). Currently, there is no identified funding source for these signs.

The requirement that a landlord obtain written proof that potential tenants are *not* sexual offenders may increase the number of such requests to law enforcement agencies, including but not limited to FDLE and the Miami-Dade Police Department. The increased requests could prompt MDPD to add additional staff to the Sex Crimes Bureau to process the requests. Such staff could include additional police officers, and police records specialists (see salary chart below).

	Minimum Annual Salary	Maximum Annual Salary
Police Officer	\$ 34,829.34	\$ 60,612.24
Police Records Specialist 1	\$ 23,631.14	\$ 36,245.56

Source: Miami-Dade County Employee Relations Dept.

V. COMMENTS AND QUESTIONS

Questions and Answers regarding the Florida Sexual Predators Act, and local ordinances restricting the residency of sexual offenders

Does the residency restriction violate the offender's right of freedom to travel?

No, the residency restriction does not restrict interstate or intrastate travel. It does restrict the access of an offender from places where children congregate, in order to reduce the risk to minors.

Does the residency restriction violate the rights of offenders who were not convicted of sex crimes on minors?

No, the residency restriction can include all sexual offenders in a classification. It is reasonable for a Commission to believe that a residency restriction based on a broad classification of sexual offenses will protect the public better than a residency restriction based on a more narrow classification of sexual offenses.

Does the residency restriction constitute another form of punishment?

No, the residency restriction is civil in nature, with the intent to protect the public by reducing the opportunity for offenders to have access to children. The Commission has

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the power to enact a regulatory measure with the intention to protect the public, even if the effect is punitive.

Does the residency restriction constitute a form of banishment?

No, offenders can still travel through the restricted residential areas, and can utilize the parks when no minors are present. However, most parks will likely have minors present, especially large parks and on weekends, thereby making parks generally off-limits, unless the offender is accompanied by his or her own child.

Concerns regarding the residential restriction for sex offenders

The ordinance creates a concentration of offenders in residential areas outside the restricted areas.

State law establishes a 1,000 foot residence restriction for certain offenders. From a single point, a 2,500 foot residence restriction produces an area that is over eight times larger than a 1,000 foot residence restriction. It is unknown if the courts will set a limit on the residence restriction, especially if the restriction effectively removes all residences in a municipality from availability to offenders. For example, the effect of Miami Beach's recent ordinance prohibits an offender from living anywhere in the city.

By excluding offenders from certain residential areas in the county, the concentration of offenders will increase in the unrestricted areas of the county (if the offenders should chose to continue to reside in the county). The residents of those unrestricted areas may not desire to host additional offenders who cannot live in the restricted areas of the county. The residents may desire their own residential restrictions, further decreasing available areas for sexual offender residency, which further increases the concentration in the remaining unrestricted areas.

The ordinance places a burden on landlords.

The ordinance prohibits a landlord from knowingly renting a residence to a sex offender inside the restricted area. This would apply to all landlords, including those home owners who rent the small apartments attached to their single family homes.

It is unknown how long each agency would take to respond to a request from a landlord, or how much each agency would charge for the service. A response time of days or weeks places an economic loss on the renting of a residential unit.

MDPD is currently working with the 311 call center to streamline the processing of these expected requests. It is expected that a caller to the 311 call center would be provided with a "control number." This control number, once submitted to the MDPD Sex Crimes Bureau, would automatically generate and mail a postcard stating the prospective tenant's status.

LEGISLATIVE ANALYSIS

RESOLUTION REJECTING ALL PROPOSALS FOR THE PROCUREMENT OF SMALL, LOW FLOOR TRANSIT BUSES IN RESPONSE TO REQUEST FOR PROPOSALS (RFP) NO. 407, WAIVING THE REQUIREMENTS OF SECTIONS 2-8.3 AND 2-8.4 OF THE MIAMI-DADE COUNTY CODE PERTAINING TO BID PROTESTS, AND AUTHORIZING A WAIVER OF COMPETITIVE BIDS AND NEGOTIATIONS WITH THE FOUR RESPONSIVE PROPOSERS

Miami-Dade Transit

I. SUMMARY

This resolution seeks approval for the rejection of all proposals received in conjunction with RFP No. 407 (Small Low-Floor Transit Buses).

Further, the County Manager is seeking a Waiver of Competitive Bidding in order to authorize negotiations with four (4) of the original proposers in an attempt to bring forward to the Board of County Commissioners (BCC) an Award Recommendation in the most expedient manner.

II. PRESENT SITUATION

- November 5, 2002 – Residents of Miami-Dade County approve a ½ cent Surtax for Transportation infrastructure needs known as the Peoples Transportation Plan (PTP).
 - Part of the PTP called for the expansion of the County’s Bus Fleet by approximately 635 buses.
- September 11, 2003 – BCC approves advertisement of RFP No. 407 for the procurement of 400 Small Low-Floor Buses.
 - Estimate for buses at this time was \$201,500,000.
- Seven (7) proposals were received from five (5) different companies.
 1. Bluebird Coachworks
 2. Daimler Chrysler
 3. ElDorado National
 4. Optare Group Limited (Proposal was deemed non-responsive with reference to DBE Goals)
 5. Optima Bus Corporation
- December 2004 – January 2005 – Evaluation Committee heard Oral Presentations from four (4) remaining bidders.

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- March 23, 2005 – Negotiations Committee requests MDT staff review financial statements of four (4) remaining companies in accordance with the United State's Generally Accepted Accounting Principals (GAAP).
 - Bluebird Coachwork's financial statements were provided by it's parent company, the Henleys Group, PLC, and were done in accordance with the United Kingdom's GAAP.
 - **MDT found Bluebird's financial statements to be incomplete, therefore Bluebird Coachworks was not entitled to further consideration by the Negotiating Committee.**
- Optima Bus Corporation was recommended as the highest ranked proposer by the Negotiating Committee.
- August 23, 2005 – Bluebird files bid protest.
- September 21, 2005 – Hearing Examiner submits findings of fact to Clerk of the Board.
 - **The Hearing Examiner found Bluebird to be responsive and responsible.**
 - **Further, the hearing examiner found that Optima was not financially responsible, and recommended that Bluebird, ElDorado, and Diamler Chrysler be reevaluated**

III. POLICY CHANGE AND IMPLICATION

The County Manager is recommending that the BCC not accept the hearing examiner's recommendation, and that the Board authorize him to convene a five (5) person Negotiating Committee made up of Dr. Carlos Bonzon, ACM., Roosevelt Bradley, Director MDT., Mayra Bustamante C.P.A. Deputy Director MDT., as well as 2 professionals outside of County Government.

This committee will reevaluate the original submittals, as well as the initial Best and Final Offers (BAFO) proffered by the four remaining companies and make a recommendation to the BCC within 90 days of the passage of this item.

IV. ECONOMIC IMPACT

There is no quantifiable fiscal impact based on the rejection of these proposals and the re-negotiation process.

However, the original estimate of \$201,500,000 for these buses is over two (2) years old at this time. (The cost per vehicle and/or associated services may have escalated in that 2 years.)

V. COMMENTS AND QUESTIONS

Attachment 1 – Herald Article from September 24, 2005

Attachment 2 – Herald Article from August 24, 2005

BIG BUS DEAL TAKES A U-TURN

The Miami Herald - September 24, 2005

Miami-Dade County officials unfairly disqualified Blue Bird Coachworks, a prominent Georgia bus manufacturer, from competing for a highly coveted multimillion dollar contract to supply 300 new 30-foot Metrobuses, a hearing examiner has ruled.

On top of that, retired Circuit Judge Jack M. Turner recommended that county officials disqualify the apparent winner of the contract, **Optima** Bus Co. of Wichita, Kan. - citing many of the very same financial reporting shortcomings that had snarled Blue Bird's bid.

In his ruling, Turner noted that Blue Bird's bid would have come in \$12 million lower than **Optima's**. ``There was no basis for the committee to completely reject Blue Bird's proposal for alleged financial irresponsibility based upon an immaterial technical irregularity and to award the contract to **Optima** for \$12 million more," Turner wrote in a 16-page opinion signed Wednesday.

It's unclear what the unusual decision in the bid protest launched by Blue Bird will mean to the five-year, \$97.7 million contract - county officials could go forward with the **Optima** contract or throw out **Optima's** bid and reevaluate other bids they received. The most likely option: They could start from scratch on the contract.

What is clear is that the County Commission, which will ultimately decide the question is in for a high-stakes lobbying effort no matter what County Manager George Burgess recommends to commissioners. ``You've got to understand, this almost never happens," said Blue Bird's Miami-based litigator, Barry Davidson of Hunton & Williams. ``It's extremely rare to win a bid protest like this."

Optima lobbyist Miguel De Grandy strongly disagreed with the judge's reasoning for disqualifying his client on financial grounds tied to the private hedge fund that owns the bus company. De Grandy added that the \$12 million savings figure is a red herring aimed at scoring political points.

The selection committee had graded **Optima** so far ahead of Blue Bird and the other competing firms on the technical merits that constituted 70 percent of the scoring that Blue Bird still would have wound up ranked No. 2 after factoring in the pricing criteria, de Grandy said.

``Just because they're coming in at the cheapest price doesn't mean they are delivering the best bus," De Grandy said. ``There's a value - a serious value - in providing the best, most reliable bus, the one that won't break down and will remain in service."

Optima hired former state Rep. De Grandy, one of the most successful lobbyists at County Hall. Blue Bird engaged Davidson to litigate the bid protest and Ron Book to lead its lobbying effort.

De Grandy has filed a separate ethics complaint accusing Davidson of lobbying county staffers on Blue Bird's behalf without registering. Davidson says he did not need to register because he was acting as a lawyer-litigator, not a lobbyist.

Transit Director Roosevelt Bradley said that a brand new procurement process could be fast-tracked so that a selection could be delivered in 90 to 120 days rather than the year-plus it took to reach the **Optima** decision. ``I'm not saying that this is the way we're going, but if we did I think we can get it done pretty quick," Bradley said. ``We already have all the specs in place. It's a very detailed package. The industry already knows what we're looking for."

Any short-term delays in delivering new buses to the Transit fleet will not change the agency's ability to roll out new routes and improve trip frequencies - as promised when officials asked voters to approve a half-cent sales tax increase in 2002, Bradley said.

The new buses are 30-foot, low-floored, models that seat 28 and have standing room for another 21 passengers. The new generation is supposed to feature a design that will make the buses look a bit like high-speed trains.

Transit commonly runs 30-foot buses on urban circulator routes and newer lines that are building ridership.

Attachment 2 (8J1A)

LOSING MINIBUS BIDDER SEEKS DECISION REVERSAL

The Miami Herald - August 24, 2005

A bus manufacturer Tuesday accused Miami-Dade County officials of unfairly eliminating it at the eleventh hour from competing for a five-year contract worth nearly \$100 million to supply 300 new 30-foot minibuses to the local transit agency.

In a formal bid protest filed late Tuesday, Blue Bird Coachworks seeks to reverse a county staff recommendation that commissioners ratify a five-year, \$97.7 million deal with the No. 1-ranked firm, **Optima** Bus Corp. of Wichita, Kan.

Records indicate that Blue Bird of Fort Valley, Ga., had offered to deliver the same state-of-the-art minibuses, spare parts, training for mechanics and other services for \$11.9 million less than **Optima**.

But a five-person selection committee, which included two high-ranking transit agency officials, never looked at Blue Bird's sealed bid, because the firm was eliminated in April for failing to submit complete financial statements.